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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,269	05/14/2001	Paul Wynen	1536	6607
7590	12/18/2003		EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			BALSIS, SHAY L	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/806,269	WYNEN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Shay L Balsis	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 30 October 2003.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-13 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-6 is/are rejected.  
 7) Claim(s) 7-13 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 14 May 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Feigenbaum (USPN 5732436).

Feigenbaum teaches wiper blade comprising a wiper strip (16), which is held by a support bracket system (26). The wiper strip is encompassed by a protective profile (10), characterized in that the protective profile is closed in the longitudinal direction on both ends by a cover (56), which can be used to open and close the protective profile. The end covers rests again the wiper strip since the protective profile has an open profile at the ends. The cover has two closing surfaces, each run along a side surface (22) of the profile. The cover has an axis of symmetry lateral to the longitudinal direction, and is positioned on a front side of the protective profile. Also, the end wall closing the profile is considered to be a projection extending from a lateral side.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Stoller (USPN 3021548).

Stoller teaches wiper blade comprising a wiper strip (12), which is held by a support bracket system (12). The wiper strip is encompassed by a protective profile (17), characterized in that the protective profile is closed in the longitudinal direction on both ends by a cover (30),

which can be used to open and close the protective profile. The end covers rests against the wiper strip since the protective profile has an open profile at the ends. The cover has two closing surfaces, each run along a side surface (figure 6) of the profile. Additionally the cover has an axis of symmetry lateral to the longitudinal direction, and is positioned on a front side of the protective profile.

*Allowable Subject Matter*

4. Claims 7-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Claim 7 includes the limitation that there is a gap between the projection and a second side wall of the protective profile. Stoller and Feigenbaum fail to teach an end cover, a projection and a gap between the projection and the protective profile, nor would it have been obvious to combine references to achieve the claimed invention.

Claim 12 includes the limitation that the protective profile has two projections. Stoller and Feigenbaum fail to teach an end cover as well as two projections, nor would it have been obvious to combine references to achieve the claimed invention.

Claim 13 includes the limitation that the projection is produces with an ultrasonic source. Stoller and Feigenbaum fail to teach an end cover as well as a projection formed by an ultrasonic source, nor would it have been obvious to combine references to achieve the claimed invention.

For the above reasons claims 7-13 are free from the prior art.

*Applicant's Arguments*

5.
  - a. Feigenbaum does not teach a protective profile for a new wiper blade but teaches a cover for a worn wiper blade.
  - b. Part 56 of Feigenbaum is not an end cover and it is formed on the replacement blade as one piece.
  - c. Feigenbaum's invention is made from a rubber-elastic material. These materials are not suited for practice for protective profiles.
  - d. Stoller is porous, elastic and does not teach a projection.

*Response to Arguments*

6.
  - a. In response to applicant's argument, Feigenbaum is not used on new wiper blades, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Additionally, the applicant does not recite the limitation, in independent claim 1, that the wiper blade must be new.
  - b. While Feigenbaum does teach that part 56 and part 10 are one piece, applicant does not include the limitation that they the protective profile and the end cover must be two separate pieces.

c. While Feigenbaum does teach that the replacement wiper blade is made from a rubber-elastic material, applicant does not claim what material the protective profile should be made from.

d. While Stoller does teach that the replacement wiper blade is made from an elastic material, applicant does not claim what material the protective profile should be made from. Additionally, it is noted that the Examiner never claimed that Stoller had a projection.

*Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is presently 703-305-7275 after December 16, 2003 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.

S1b  
12/10/03

*Robert J. Warden, Jr.*

**ROBERT J. WARDEN, SR.  
SUPERVISORY PATENT EXAMINER  
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